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11 Attorneys for Defendant  
12 THOMAS CUTHBERTSON, individually and doing business  
13 as HOMESTEAD AUTO WASH  
14

15 UNITED STATES DISTRICT COURT  
16  
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
18

19 CHEVRON INTELLECTUAL  
20 PROPERTY LLC and CHEVRON U.S.A.  
21 INC.,

22 Plaintiffs,

23 v.

24 THOMAS CUTHBERTSON, individually  
25 and doing business as HOMESTEAD  
26 AUTO WASH, MARY MARCHESE, an  
27 individual, CHRISTOPHER MARCHESE  
28 JR., an individual AND DOES 1-50  
INCLUSIVE,

Defendants.

CASE NO. 4:07-cv-06407-WDB

ANSWER TO COMPLAINT

1 Defendant Thomas Cuthbertson individually and dba Homestead Auto Wash  
2 ("Defendant"), by and through his attorneys of record, Donahue Gallagher Woods LLP, hereby  
3 submits this Answer to the Complaint filed on December 17, 2007, by plaintiff Chevron  
4 Intellectual Property, LLC and Chevron USA, Inc., and responds as follows:

5 1. Answering Paragraph 1 of the Complaint, Defendant is without sufficient  
6 knowledge or information to form a belief as to the truth of the allegations contained in said  
7 paragraph, and on that basis denies each and all said allegations.

8 2. Answering Paragraph 2 of the Complaint, Defendant is without sufficient  
9 knowledge or information to form a belief as to the truth of the allegations contained in said  
10 paragraph, and on that basis denies each and all said allegations.

11 3. Answering Paragraph 3 of the Complaint, Defendant is without sufficient  
12 knowledge or information to form a belief as to the truth of the allegations contained in said  
13 paragraph, and on that basis denies each and all said allegations.

14 4. Answering Paragraph 4 of the Complaint, Defendant is without sufficient  
15 knowledge or information to form a belief as to the truth of the allegations contained in said  
16 paragraph, and on that basis denies each and all said allegations.

17 5. Answering Paragraph 5 of the Complaint, Defendant is without sufficient  
18 knowledge or information to form a belief as to the truth of the allegations contained in said  
19 paragraph, and on that basis denies each and all said allegations.

20 6. Answering Paragraph 6 of the Complaint, Defendant admits that he is an  
21 individual residing in California doing business as Homestead Auto Wash, an automobile  
22 gasoline service station and car wash located at 3500 Homestead Road, Santa Clara, CA 95051.  
23 Except as expressly admitted, Defendant denies the remaining allegations of Paragraph 6.

24 7. Paragraph 7 is missing from the Complaint.

25 8. Answering Paragraph 8 of the Complaint, Defendant is without sufficient  
26 knowledge or information to form a belief as to the truth of the allegations contained in said  
27 paragraph, and on that basis denies each and all said allegations.

28 9. Answering Paragraph 9 of the Complaint, Defendant is without sufficient

1 knowledge or information to form a belief as to the truth of the allegations contained in said  
2 paragraph, and on that basis denies each and all said allegations.

3 10. Answering Paragraph 10 of the Complaint, Defendant is without sufficient  
4 knowledge or information to form a belief as to the truth of the allegations contained in said  
5 paragraph, and on that basis denies each and all said allegations.

6 11. Answering Paragraph 11 of the Complaint, Defendant is without sufficient  
7 knowledge or information to form a belief as to the truth of the allegations contained in said  
8 paragraph, and on that basis denies each and all said allegations.

9 12. Answering Paragraph 12 of the Complaint, Defendant is without sufficient  
10 knowledge or information to form a belief as to the truth of the allegations contained in said  
11 paragraph, and on that basis denies each and all said allegations.

12 13. Answering Paragraph 13 of the Complaint, Defendant is without sufficient  
13 knowledge or information to form a belief as to the truth of the allegations contained in said  
14 paragraph, and on that basis denies each and all said allegations.

15 14. Answering Paragraph 14 of the Complaint, Defendant is without sufficient  
16 knowledge or information to form a belief as to the truth of the allegations contained in said  
17 paragraph, and on that basis denies each and all said allegations.

18 15. Answering Paragraph 15 of the Complaint, Defendant is without sufficient  
19 knowledge or information to form a belief as to the truth of the allegations contained in said  
20 paragraph, and on that basis denies each and all said allegations.

21 16. Answering Paragraph 16 of the Complaint, Defendant is without sufficient  
22 knowledge or information to form a belief as to the truth of the allegations contained in said  
23 paragraph, and on that basis denies each and all said allegations.

24 17. Answering Paragraph 17 of the Complaint, Defendant is without sufficient  
25 knowledge or information to form a belief as to the truth of the allegations contained in said  
26 paragraph, and on that basis denies each and all said allegations.

27 18. Answering Paragraph 18 of the Complaint, Defendant is without sufficient  
28 knowledge or information to form a belief as to the truth of the allegations contained in said

1 paragraph, and on that basis denies each and all said allegations.

2 19. Answering Paragraph 19 of the Complaint, Defendant is without sufficient  
3 knowledge or information to form a belief as to the truth of the allegations contained in said  
4 paragraph, and on that basis denies each and all said allegations.

5 20. Answering Paragraph 20 of the Complaint, Defendant is without sufficient  
6 knowledge or information to form a belief as to the truth of the allegations contained in said  
7 paragraph, and on that basis denies each and all said allegations.

8 21. Answering Paragraph 21 of the Complaint, Defendant is without sufficient  
9 knowledge or information to form a belief as to the truth of the allegations contained in said  
10 paragraph, and on that basis denies each and all said allegations.

11 22. Answering Paragraph 22 of the Complaint, Defendant admits that Defendant once  
12 operated a licensed, authorized TEXACO-branded service station and sold authentic TEXACO  
13 brand gasoline and related products. Except as expressly admitted, Defendant denies the  
14 remaining allegations of Paragraph 22.

15 23. Answering Paragraph 23 of the Complaint, Defendant denies each and all  
16 allegations contained therein.

17 24. Answering Paragraph 24 of the Complaint, Defendant denies each and all  
18 allegations contained therein.

19 22 (sic). Answering the second Paragraph 22 of the Complaint, Defendant denies  
20 each and all allegations contained therein.

21 23 (sic). Answering the second Paragraph 23 of the Complaint, Defendant denies  
22 each and all allegations contained therein.

23 24 (sic). Answering the second Paragraph 24 of the Complaint, Defendant denies  
24 each and all allegations contained therein.

25 25. Answering Paragraph 25 of the Complaint, Defendant denies each and all  
26 allegations contained therein.

27 26. Answering Paragraph 26 of the Complaint, Defendant denies each and all  
28 allegations contained therein.

1           27.     Answering Paragraph 27 of the Complaint, Defendant denies each and all  
2     allegations contained therein.

3           28.     Answering Paragraph 28 of the Complaint, Defendant denies each and all  
4     allegations contained therein.

5           29.     Answering Paragraph 29 of the Complaint, Defendant denies each and all  
6     allegations contained therein.

7           30.     Answering Paragraph 30 of the Complaint, Defendant denies each and all  
8     allegations contained therein.

9           31.     Answering Paragraph 31 of the Complaint, Defendant incorporates herein by this  
10    reference each of the allegations, admissions, and denials in Paragraphs 1 through 30 as though  
11    fully set forth.

12          32.     Answering Paragraph 32 of the Complaint, Defendant denies each and all  
13    allegations contained therein.

14          33.     Answering Paragraph 33 of the Complaint, Defendant denies each and all  
15    allegations contained therein.

16          34.     Answering Paragraph 34 of the Complaint, Defendant denies each and all  
17    allegations contained therein.

18          35.     Answering Paragraph 35 of the Complaint, Defendant denies each and all  
19    allegations contained therein.

20          36.     Answering Paragraph 36 of the Complaint, Defendant denies each and all  
21    allegations contained therein.

22          37.     Answering Paragraph 37 of the Complaint, Defendant incorporates herein by this  
23    reference each of the allegations, admissions, and denials in Paragraphs 1 through 36 as though  
24    fully set forth.

25          38.     Answering Paragraph 38 of the Complaint, Defendant denies each and all  
26    allegations contained therein.

27          39.     Answering Paragraph 39 of the Complaint, Defendant denies each and all  
28    allegations contained therein.

1           40.     Answering Paragraph 40 of the Complaint, Defendant denies each and all  
2     allegations contained therein.

3           41.     Answering Paragraph 41 of the Complaint, Defendant denies each and all  
4     allegations contained therein.

5           42.     Answering Paragraph 42 of the Complaint, Defendant denies each and all  
6     allegations contained therein.

7           43.     Answering Paragraph 43 of the Complaint, Defendant denies each and all  
8     allegations contained therein.

9           44.     Answering Paragraph 44 of the Complaint, Defendant denies each and all  
10    allegations contained therein.

11          45.     Answering Paragraph 45 of the Complaint, Defendant denies each and all  
12    allegations contained therein.

13          46.     Answering Paragraph 46 of the Complaint, Defendant incorporates herein by this  
14    reference each of the allegations, admissions, and denials in Paragraphs 1 through 45 as though  
15    fully set forth.

16          47.     Answering Paragraph 47 of the Complaint, Defendant denies each and all  
17    allegations contained therein.

18          48.     Answering Paragraph 48 of the Complaint, Defendant denies each and all  
19    allegations contained therein.

20          49.     Answering Paragraph 49 of the Complaint, Defendant denies each and all  
21    allegations contained therein.

22          50.     Answering Paragraph 50 of the Complaint, Defendant denies each and all  
23    allegations contained therein.

24          51.     Answering Paragraph 51 of the Complaint, Defendant denies each and all  
25    allegations contained therein.

26          52.     Answering Paragraph 52 of the Complaint, Defendant denies each and all  
27    allegations contained therein.

28          53.     Answering Paragraph 53 of the Complaint, Defendant denies each and all

1 allegations contained therein.

2 54. Answering Paragraph 54 of the Complaint, Defendant denies each and all  
3 allegations contained therein.

4 55. Answering Paragraph 55 of the Complaint, Defendant incorporates herein by this  
5 reference each of the allegations, admissions, and denials in Paragraphs 1 through 54 as though  
6 fully set forth.

7 56. Answering Paragraph 56 of the Complaint, Defendant is without sufficient  
8 knowledge or information to form a belief as to the truth of the allegations contained in said  
9 paragraph, and on that basis denies each and all said allegations.

10 57. Answering Paragraph 57 of the Complaint, Defendant denies each and all  
11 allegations contained therein.

12 58. Answering Paragraph 58 of the Complaint, Defendant denies each and all  
13 allegations contained therein.

14 59. Answering Paragraph 59 of the Complaint, Defendant denies each and all  
15 allegations contained therein.

16 60. Answering Paragraph 60 of the Complaint, Defendant denies each and all  
17 allegations contained therein.

18 61. Answering Paragraph 61 of the Complaint, Defendant denies each and all  
19 allegations contained therein.

20 62. Answering Paragraph 62 of the Complaint, Defendant incorporates herein by this  
21 reference each of the allegations, admissions, and denials in Paragraphs 1 through 61 as though  
22 fully set forth.

23 63. Answering Paragraph 63 of the Complaint, Defendant denies each and all  
24 allegations contained therein.

25 64. Answering Paragraph 64 of the Complaint, Defendant denies each and all  
26 allegations contained therein.

27 65. Answering Paragraph 65 of the Complaint, Defendant denies each and all  
28 allegations contained therein.

1           66.     Answering Paragraph 66 of the Complaint, Defendant denies each and all  
2     allegations contained therein.

3           67.     Answering Paragraph 67 of the Complaint, Defendant incorporates herein by this  
4     reference each of the allegations, admissions, and denials in Paragraphs 1 through 66 as though  
5     fully set forth.

6           68.     Answering Paragraph 68 of the Complaint, Defendant denies each and all  
7     allegations contained therein.

8           69.     Answering Paragraph 69 of the Complaint, Defendant denies each and all  
9     allegations contained therein.

10          70.     Answering Paragraph 70 of the Complaint, Defendant denies each and all  
11     allegations contained therein.

12          71.     Answering Paragraph 71 of the Complaint, Defendant denies each and all  
13     allegations contained therein.

14          72.     Answering Paragraph 72 of the Complaint, Defendant incorporates herein by this  
15     reference each of the allegations, admissions, and denials in Paragraphs 1 through 71 as though  
16     fully set forth.

17          73.     Answering Paragraph 73 of the Complaint, Defendant denies each and all  
18     allegations contained therein.

19          74.     Answering Paragraph 74 of the Complaint, Defendant denies each and all  
20     allegations contained therein.

21          75.     Answering Paragraph 75 of the Complaint, Defendant denies each and all  
22     allegations contained therein.

23          76.     Answering Paragraph 76 of the Complaint, Defendant denies each and all  
24     allegations contained therein.

25          77.     Answering Paragraph 77 of the Complaint, Defendant denies each and all  
26     allegations contained therein.

27          78.     Answering Paragraph 78 of the Complaint, Defendant incorporates herein by this  
28     reference each of the allegations, admissions, and denials in Paragraphs 1 through 77.



1           79. Answering Paragraph 79 of the Complaint, Defendant denies each and all  
2 allegations contained therein.

3                                   **AFFIRMATIVE DEFENSES**

4           As and for separate and distinct affirmative defenses to the Complaint, Defendant alleges  
5 as to each and all of the allegations contained in the Complaint:

6                                   **FIRST AFFIRMATIVE DEFENSE**

7                                   **(Lack of Standing)**

8           1. Defendant affirmatively alleges as a defense that Plaintiffs lack standing to assert  
9 the Complaint against Defendant in this matter.

10                                  **SECOND AFFIRMATIVE DEFENSE**

11                                  **(Failure to State a Claim)**

12           2. Defendant affirmatively alleges as a defense that each and all of Plaintiffs'  
13 Complaints fail to state facts sufficient to state a claim for which relief may be granted.

14                                  **THIRD AFFIRMATIVE DEFENSE**

15                                  **(Ambiguous)**

16           3. Defendant affirmatively alleges as a defense to Plaintiffs' Complaint that Plaintiffs  
17 are precluded from recovery because the claims are ambiguous, uncertain, and unintelligible.

18                                  **FOURTH AFFIRMATIVE DEFENSE**

19                                  **(Estoppel)**

20           4. Defendant affirmatively alleges as a defense that Plaintiffs are, by virtue of their  
21 own inequitable conduct, estopped from recovery on each claim for relief alleged against  
22 Defendant in the Complaint.

23                                  **FIFTH AFFIRMATIVE DEFENSE**

24                                  **(Laches)**

25           5. Defendant affirmatively alleges as a defense that each claim for relief alleged  
26 against Defendant in the Complaint are barred by laches.

**SIXTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

6. Defendant affirmatively alleges as a defense that Plaintiffs come to this court with unclean hands and are therefore barred from recovery on their Complaint.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Willful Misconduct)**

7. Plaintiffs' Complaint as a whole, and each and every counter claim alleged therein, is barred in whole or in part because Plaintiffs are guilty of willful misconduct that contributed to the happening of the actions that resulted in Plaintiffs' damages, if any.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Waiver)**

8. Plaintiffs, and each of them, are precluded from recovery by the doctrine of waiver.

**NINTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

9. Defendant affirmatively alleges as a defense to each of Plaintiffs' claims that Plaintiffs' alleged damages, if any, were aggravated by Plaintiffs' failure to use reasonable diligence to mitigate them.

**TENTH AFFIRMATIVE DEFENSE**

**(Set-off)**

10. Defendant affirmatively alleges as a defense that Plaintiffs' claims for damages must be offset by moneys received from any other source, if any, or must be offset by moneys owed by Plaintiffs to Defendant, or subject to setoff based on the acts and wrongdoing of Plaintiffs.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Consent)**

11. Defendant affirmatively alleges as a defense that Plaintiffs acknowledged, ratified, consented to, and acquiesced in the alleged acts or omissions, if any, of Defendant thus barring Plaintiffs from any relief as prayed for in the Complaint.

**TWELFTH AFFIRMATIVE DEFENSE**

**(No Proximate Causation)**

12. Plaintiffs, and each of them, are precluded from recovering for damages because damages, if any, suffered by Plaintiffs were not proximately caused by any acts of Defendant.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Release of Claims)**

13. Plaintiffs' Complaint as a whole, and each and every Complaint alleged therein, is barred in whole or in part because Plaintiffs have released any claims it may have had against Defendant.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Lack of Damages)**

14. Defendant affirmatively alleges as a defense that Plaintiffs have not suffered any damages as a result of any of the alleged acts or omissions of Defendant.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Speculative Damages)**

15. Defendant affirmatively alleges as a defense that the damages, if any, claimed by Plaintiffs are wholly speculative and are not susceptible to determination.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Comparative Negligence)**

16. Defendant affirmatively alleges as a defense that Plaintiffs were careless, negligent, and/or culpable in and about the matter of which it complained and failed to exercise reasonable and ordinary care, caution or prudence to protect their interests. Such carelessness, negligence and culpable conduct proximately caused the damage, if any, sustained by Plaintiffs.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

17. Defendant affirmatively alleges as a defense that the counter claims alleged by Plaintiffs in the Complaint are barred as a result of the running of one or more of the relevant statutes of limitation, including, but not limited to, 28 U.S.C. § 1658.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Additional Affirmative Defenses)**

18. Defendant reserves the right to assert additional affirmative defenses in the event that additional affirmative defenses become apparent during the course of this litigation.

Dated: February 29, 2008

DONAHUE GALLAGHER WOODS LLP

By: 

John C. Kirke

Attorneys for Defendant

THOMAS CUTHBERTSON, individually and  
doing business as HOMESTEAD AUTO WASH

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38 and Local Rule 38-201 Defendant Thomas Cuthbertson individually and dba Homestead Auto Wash hereby demands trial by jury.

Dated: February 29, 2008

DONAHUE GALLAGHER WOODS LLP

By: John C. Kirke  
John C. Kirke  
Attorneys for Defendant  
THOMAS CUTHBERTSON, individually and  
doing business as HOMESTEAD AUTO WASH